IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1073 of 2001

Hon'ble MR.JUSTICE Y.B.BHATT

and

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ORIENTAL INSURANCE CO. LTD.

Versus

SHANTILAL GOPALJI MOTA

Appearance:

MR SHALIN N MEHTA for Appellant

MR SANDEEP N BHATT for Respondent No. 1

NOTICE UNSERVED for Respondent No. 2

NOTICE SERVED for Respondents No. 3-6

CORAM : MR.JUSTICE Y.B.BHATT

and

MR.JUSTICE M.H.KADRI

Date of decision: 23/01/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE Y.B.BHATT)

1. On a joint request of learned counsel, this appeal is taken up for final hearing today.

2. This is an appeal under section 173 of the Motor Vehicles Act, at the instance of the Insurance Company, challenging the judgement and award passed by the Motor Accident Claims Tribunal, Kutch at Gandhidham, under section 163-A of the said Act.

3. It is pertinent to note that the said award has been passed by order below Exh.17, whereas the main claim petition under section 166 of the Act being Motor Accident Claim Petition No.1507/99 is yet pending.

4. Learned counsel for the appellant contends that the Tribunal has erred in law in treating the said Claim Petition under section 163-A as a claim of an interim nature, and has dealt with it in a manner similar to a claim under section 140 of the said Act. It was contended that on account of this approach on the part of the Tribunal, the appellant Insurance Company had no opportunity of leading appropriate evidence and/or meeting the contentions of the original claimants in these proceedings under section 163-A. According to the learned counsel for the appellant, the law as laid down by the Supreme Court does not permit the claimants to pursue a claim under section 163-A of the Act, whether by way of an interim application or even by way of a final decision, as long as the main claim under section 166 of the said Act is pending adjudication. In other words, learned counsel for the appellant contends that the claims filed under section 163-A and section 166 of the said Act are in the nature of alternative remedies, and only one of such remedies can be pursued, whereas the two remedies cannot be pursued simultaneously or in succession. We are obliged to accept this contention on the part of the learned counsel for the appellant in view of the clear decision of the Supreme Court in the case of The Oriental Insurance Co. Ltd. Vs. Hansrajbhai V. Kodala and others, reported in JT 2001(4) SC 477. It is, therefore, obvious that on the facts of the case, since the main claim petition under section 166 of the Act is pending, the Tribunal had no jurisdiction either to entertain or to decide a claim under section 163-A of the said Act. In the premises aforesaid, the impugned award under section 163-A is required to be quashed and set aside. We hold and direct accordingly.

5. On the facts of the case, we are informed that an amount of Rs.25000/- which had been deposited by the appellant with the Registry has been directed to be transmitted to the Tribunal. Thus, this amount is already with the Tribunal. The appellant shall make a further deposit of Rs.25000/- with the Tribunal so as to make up an amount of Rs.50000/-.

6. We are mindful of the fact that the main claim under section 166 is yet pending adjudication and we are also mindful of the fact that in such a claim petition, it is always open to the claimants to prefer an application under section 140 of the said Act.

7. In the premises aforesaid, and on the facts of the case, we hold by consensus between the learned counsel for the parties that it would be open to the respondents - original claimants to prefer an application under section 140 in the claim petition, now pending under section 166 of the said Act.

8. We are also conscious that in case of a fatality from which the main claim petition arose, the maximum the Tribunal could award under section 140 would be Rs.50000/-. This sum of Rs.50000/- has, by virtue of the present judgement and order, been placed at the disposal of the Tribunal.

9. This amount of Rs.50000/- may be withdrawn by the original claimants after filing and obtaining an order upon the application under section 140 of the said Act, in the main claim petition under section 168 of the said Act.

10. However, this right conferred upon the original claimants to withdraw the amount of Rs.50,000/- shall be subject to the claimants filing an undertaking before the Tribunal to the effect that the claimants shall pursue the main claim petition under section 166 of the Act, and obtain an adjudication thereon, on merits and in accordance with law, and that they shall not permit this application to be withdrawn or dismissed for default, or be disposed of in any other manner, and that the amount of Rs.50000/- withdrawn by the claimants shall be adjusted in the final award under section 168 of the said Act. If such an undertaking is not filed along with an application under section 140 of the said Act, it shall be open to the appellant Insurance Company to apply to the Tribunal for restitution/refund of the amount of Rs.50000/-.

11. This appeal is, therefore, allowed to the aforesaid extent with no order as to costs. Decree accordingly.

12. In case the main claim petition under section 166 of the Act has been withdrawn by the claimants, it shall be open to them to apply to the Tribunal for revival. Such an application, if filed by the claimants, shall not be objected to by the Insurance Company, as per the statement made by the learned counsel for the Insurance Company. Such an application, if made, shall normally be granted by the Tribunal.

13. It requires to be noted that on the facts and circumstances noted hereinabove and in view of the directions consequently issued, it would be appropriate for the Tribunal to expedite the hearing of the main claim petition under section 166 of the said Act, and to dispose of the same as early as possible in consonance with the date of its filing and the workload before the Tribunal.

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